

New Form for Multiple Offer Notification

The Multiple Offer Notification & Acknowledgment Form was approved by the Commission at its February meeting and is effective immediately. It is available from the SDREC website – <http://sdrec.sd.gov> – under “Real Estate Forms.”

MULTIPLE OFFER NOTIFICATION & ACKNOWLEDGMENT

(If you fail to execute and return this document Seller will not be able to consider your offer)

Date: _____

Property Description: _____

Purchaser Name: _____

Selling Broker, Agent & Phone: _____

Dear Purchaser:

We are involved in a multiple offer situation on the above referenced property.

ALL OFFERS will be considered subject to the following:

1. All offers must be in writing; no verbal offers will be considered or accepted.
2. The Listing Broker/Agent must receive your written offer no later than _____ (Date) by _____ (Time).

Delivery of such offer may be via facsimile to:

Listing Broker/Agent _____

Telephone Number _____ Facsimile Number _____

3. Listing Broker/Agent will present all written offers to Seller no later than the following day.
4. The following terms and conditions shall be applicable to you and to any offer:
 - a. Seller shall have sole and absolute discretion to accept, counter or reject any offer received. Seller is not required to accept any particular offer, regardless of the terms or conditions of any offer.
 - b. Subsequent to receipt of all written offers, Seller shall have the absolute right to further negotiate the terms and conditions of any offer with any broker and/or one or more purchasers. However, Seller shall have no obligation to negotiate or communicate with Purchaser, or each, every, or any purchaser.
 - c. Under no circumstances shall verbal communication be binding on Seller.
 - d. The acceptance of any offer shall be conditioned upon the subsequent execution by Purchaser and Seller of a written contract of sale. Seller shall have no obligation to sell property unless written contract is fully executed.
 - e. If Seller rejects Purchaser's offer, Seller will provide Purchaser with notice, **in writing**, of such rejection. Purchaser will be notified of Seller's decision by Listing Broker/Agent.
5. If Seller accepts Purchaser's offer and such offer does not result in a closed sale of the property, Seller may, with complete and absolute discretion, re-open negotiations with any purchaser. Seller may also request Listing Broker/Agent to solicit new offers. None of the provisions in this form are intended to or shall be construed to limit in any way Seller's rights or remedies available under any applicable law, rule, regulation, or ordinance, or any sales contract, including all addenda thereto, entered into for the sale of the property.

By signing this form all signatories are acknowledging their understanding and acceptance of all terms and conditions in this form. This form must be fully executed and submitted to Listing Broker/Agent no later than the date and time designated above for the transmittal of offers. **Failure to timely transmit this fully executed form may prevent your offer from being considered.**

ACKNOWLEDGED AND AGREED TO BY:

Purchaser Date

Purchaser Date

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From the Director's Desk

The last two months have been very busy, but with the 86th Legislative Session winding down, so are my visits to the Capitol. My public lobbyist badge is safely tucked away in my desk drawer.

Both bills proposed by the Real Estate Commission passed with flying colors and have been signed by Governor Daugaard. They will go into effect on July 1. I'd like to thank the South Dakota Association of REALTORS® for its support of these bills. Without industry support, it is very difficult for the Commission to get legislation passed.

Senate Bill 47 changes the definition of a real estate auction as a public "outcry" to that of public "offering." This brings the definition into the 21st century because it will include Internet auctions that have become so popular in recent years. This bill also takes away the requirement that a responsible broker must own a substantial interest in a firm. Current statutes require a responsible broker, who will be in charge of the firm's activities, to own a substantial interest in the firm, meaning the responsible broker must own at least as much as anyone else. Currently, South Dakota is the only state that requires all owners and shareholders to be licensed.

By taking away the current ownership requirements, only individuals who will be actively engaged in the practice of real estate in South Dakota will be required to be licensed. There will still be a responsible broker in charge of all real estate activities performed by the firm. The firm will also be licensed, which gives the Commission regulatory authority over that as well.

Another benefit of this bill is that a firm would not have to shut down if a responsible broker is placed on inactive status or fails to renew his or her license. In instances such as these, all licensees in the firm have to cease their activities. This causes a hardship on sellers who want their properties marketed and buyers who want to look at houses. It also causes a hardship on the licensees who abide by the law but are forced to be placed

on inactive status. This bill would permit a new responsible broker, with or without an ownership in the company, to be assigned so that operations would not have to cease.

Lastly, when a responsible broker passes away or can no longer work, current statutes do not permit that office to remain open. However, this bill permits the business to remain open because a new responsible broker could be assigned and the firm could actually remain in the family. Licensees associated with the firm could continue to practice.

Although this bill lifts some aspects of regulation, it does not change the high standard of public protection provided by the Commission.

Senate Bill 49 permits the Commission to commence injunction proceedings for individuals who engage in the practice of real estate in South Dakota without obtaining a license from the commission. The injunction would be a court order demanding the unlicensed person to cease the practicing. This bill also allows the commission to recover its costs that are incurred in the investigatory process and injunction proceedings.

The Commission also supported Senate Bill 70 proposed by the South Dakota Association of REALTORS®. This bill bans private transfer fees which are fees or charges required by a private transfer fee obligation and payable upon the transfer of an interest in real property, or payable for the right to make or accept such transfer, regardless of whether the fee is a fixed amount or is determined as a percentage of the value of the property, the purchase price, or other consideration given for the transfer. This bill also requires the disclosure of a private transfer fee that exists prior to July 1, 2011. Currently the bill has passed both chambers and is on the Governor's desk for his signature.

The Commission has developed a multiple offer form which appears in this issue and is already on the Commission's website. Also, in draft form and awaiting Commission approval are two short sale addenda — one to be attached to the listing agreement and the other to the purchase agreement. I'd like to thank Brad Jensen, Will Dixon and Chairperson Lewis for their assistance in this project. Their expertise was invaluable to me.



From the Commission Chair, Paula Lewis

In West River we have had a very snowy, cold "Banana Belt" lately, which has been very good for skiers, snowmobiles and other winter sports enthusiasts, but hard on real estate sales.

I know many of you are experiencing a hard winter also and will be dealing with varying degrees of flooding and after effects of the snow and ice.

It was good to see the census figures that showed growth for South Dakota and many of the cities. Hopefully, this will help attract new businesses to our state and ease tough lending restrictions.

The commission was pleased to be invited to attend the annual SDAR Chili Supper where we visited with many licensees, builders and legislators.

As Dee has mentioned, our bills have been signed by the Governor. Thanks to the Association for their support.

At our February meeting, Department of Labor Secretary Pam Roberts and Dawn Dovre, Public Affairs Director, visited with the commission to explain Department of Labor procedures and to answer questions. As an industry member, I was particularly grateful, since I am not that familiar with state government procedures. We appreciated both of them taking time during the busy legislative session to meet with us.

During the March 15 and 16 meeting we will discuss new short sale forms that were developed in a meeting with the aid of Brad Jensen of Re/MAX of Rapid City and Will Dixon of Prudential Real Estate of Rapid City. The knowledge they have gained in working with short sales is invaluable and the process was much quicker with their help.

Advertising on Social Media sites has been a topic I want to discuss and would welcome your input and experiences.

As always, I encourage licensees to attend any of our meetings — your input is always appreciated!

DjN

SDREC Moving to Department of Labor and Regulation

On January 12, Governor Dennis Daugaard signed an Executive Order reorganizing several departments within state government.

The SD Real Estate Commission, currently attached to the Department of Revenue, will be moved to the Department of Labor and Regulation. This transition will take place over the course of the next couple of months.

In addition to the Real Estate Commission, the Division of Banking, Division of Insurance, Division of Securities, the Abstractors Board of Examiners and the Appraiser Certification Program will also be making the move to the Department of Labor and Regulation.

The effects of the reorganization will be largely internal and licensees will likely notice only minor changes in terms of interaction with the commission office staff, correspondence, etc.

We join several professional licensing boards already under the Department of Labor. They are the Board of Accountancy, the Board of Barber Examiners, the Board of Technical Professions, the Cosmetology Commission, the Electrical Commission and the Plumbing Commission.

SDREC Welcomes New Compliance Officer for Sioux Falls/Eastern SD

Brian Jackson recently accepted the position of Compliance Officer in Sioux Falls.

Brian has a Bachelor of Arts degree in Business Administration from Augustana College and was previously a mortgage and personal banking officer for Great Western Bank.

He lives in Sioux Falls with his wife, Molly, and their two sons. Welcome, Brian!

Mark Your Calendars! Spring Caravan Dates

The spring caravan course will once again be coming to a location near you!

Our featured speaker will be Chandra Hall, of Chandra Hall Seminars, and will include timely information on regulatory requirements at the federal level, working with credit-challenged buyers and much more!

Look for a detailed course description, instructor bio and registration information in the April/May issue of the Real Estate VIEW.

Course dates/locations:

Tuesday, May 3 – Watertown
Wednesday, May 4 – Aberdeen
Thursday, May 5 – Sioux Falls
Friday, May 6 – Sioux Falls
Monday, May 9 – Pierre
Tuesday, May 10 – Spearfish
Wednesday, May 11 – Rapid City



Commission Calendar

Commission Meeting
March 15 & 16 – Pierre

New Licensees

Broker

Beckman, Lisa R – Monticello, MN
Olson, Matthew R – Hawley, MN
Rounds, Jamison A – Crooks
Schwitters, Lowell H – Raymond, MN
White, Bradford P – Tulsa, OK
Wolsky, Charles A – Sioux Falls

Broker Associates

Anderson, Bradley D – Sioux Falls
Bahmuller, Melisa S – Alexandria
Buysse, Mark S – Brandon
Diekmann, Diane J – Sioux Falls
Duemeland, Jill – Mandan, ND
Frey, Kailene – Huron
Kattenberg, Joshua D – Hull, IA
Martin, Richard L – Sioux Falls
Outka, Troy D – Sioux Falls
Popkes, Christopher G – Canistota
Porter, Joann G – Sioux Falls
Rients, Ryan P – Sioux Falls

Shelton, David W – Sioux Falls
Stokes, Adam P – N. Sioux City
Thelen, Caroline C – Sioux Falls
Thompson-Wiseley, Diana L – Black Hawk

Tschetter, Grant W – Sioux Falls
Weigel, David R – Watertown

Property Manager

Kludt, Arlyn A – Lead
Rozema, Nicole R – Hill City

Residential Rental Agent

Volmer, Micah L – Sioux Falls

Registered Home Inspector

Cole, Robert W – Rapid City

South Dakota Real Estate VIEW

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Noordermeer

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THE COMMISSION AND STAFF

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Charles A. Larkin, Vice-Chair

..... Watertown

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Dennis Eissach, Member Pierre

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Dee Jones Noordermeer,

Executive Director Pierre

Karen Callahan, Education Dir..... Pierre

Norma Schilling, Licensing Pierre

Michelle Metzinger, Compliance.. Pierre

Brian Jackson, Compliance . Sioux Falls

Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

South Dakota High Court Rules That Written Agency Agreements, Disclosures Are Not Assignable

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On December 15th, the South Dakota Supreme Court upheld disciplinary sanctions imposed against a real estate licensee who failed to execute a written agency agreement with a property buyer to whom an existing purchase contract had been assigned. The Supreme Court decision overruled a lower court that came to the troubling conclusion that the licensee did not violate South Dakota's real estate licensing laws because the assignment of the purchase agreement to the new buyer automatically included the existing, separate agency agreement and disclosures that the licensee had executed with the original buyer. The Supreme Court ruled that the statutory obligation of a real estate licensee to execute a written, signed agency agreement with all parties could not be delegated through an assignment of a purchase contract, or otherwise.

According to the decision in Leonard v. State of South Dakota, ex rel South Dakota Real Estate Commission, the owner of a parcel of South Dakota ranch land hired Garry Neiderworder of Rapid Realty as the listing agent and broker. A potential buyer, Russell Engesser, entered into an agency agreement with real estate licensee Robert Leonard, also of Rapid Realty. Since both licensees were affiliated with the same company, Engesser and Leonard entered into a limited agency addendum, in accordance with South Dakota's real estate brokerage relationship laws. Engesser and the property owner entered into a purchase agreement that was contingent on the sale of Engesser's existing property. The agreement also noted the existence of a back-up purchase offer from another potential buyer. Ultimately, Engesser was unable to sell his land. A third

potential buyer, Wolken and his partners, expressed a desire to purchase the land and were provided with a property map by Leonard. In order to avoid triggering the existing back-up offer, Wolken and his partners paid \$25,000 to Engesser for the execution of an agreement under which Engesser assigned his purchase agreement with the property owner, and all of his "rights privileges and obligations" therein, to Wolken and his partners. Following the assignment, Leonard gave Wolken copies of certain restrictive covenants on the ranch land. According to Wolken, both Leonard and Neiderworder represented that the covenants would not restrict the purchase, future use or development of the property. Wolken and his partners, through their company Western Dakota Land, LLC, purchased the property and later decided to sell it by auction. It was then discovered that the property map that Leonard provided was incorrect in several particulars and the covenants were more restrictive than represented, thus requiring the withdrawal of 240 acres from the subsequent auction sale.

Western Dakota, Wolken and one of his partners filed a complaint with the South Dakota Real Estate Commission against both licensees based on their alleged representations regarding the restrictive covenants. In addition, the Commission charged that Leonard violated applicable licensing laws by failing to execute a new written agency agreement with Wolken after the assignment of the purchase agreement. After a hearing, the Commission adopted a hearing officer's decision that Leonard had engaged in "unprofessional conduct" by failing to execute a written agency agreement with Wolken as required by South Dakota Codified Law (SDCL) section 36-21A-130. The Commission ordered discipline including a two-month suspension held in abeyance pending completion of training and ethics courses, costs of the proceedings and a \$1,000 penalty. Neiderworder was exonerated.

Leonard appealed the Commission's decision to a South Dakota trial-level circuit court, which reversed the Commission's decision on the grounds that the assignment between Engesser and Wolken included the agency

agreement, and its disclosures, that were initially executed by Leonard and Engesser. The Circuit court thus ruled that Leonard did not commit "unprofessional conduct" under the licensing laws. The Commission appealed.

In reversing the decision of the circuit court, the South Dakota Supreme Court noted that SDCL section 36-21A-130 requires, among other things, that, "Any agency agreement in which a broker represents a seller or lessor shall be *in writing* and shall contain the proper legal description, the price and terms, the date of authorization, the expiration date, the type of agency relationship established, the compensation to be paid, *...and the signatures of all parties*". The statute also requires that the agency agreement "*...shall provide a clear and complete explanation of the broker's representation of the interests of the seller...or buyer...*"; and, *If the broker represents more than one party in a transaction, the agreement shall state how the representation may be altered*".

The court reasoned that the statutory mandates are intended to protect consumers and ensure that they are specifically informed of and accept the nature of the agency relationship. Even though the first purchase agreement, between the property owner and Engesser, referred to the agency agreement between Engesser and Leonard, the Supreme Court determined that the assignment agreement between Engesser and Wolken did not specifically address its effect on the existing agency agreement or satisfy Leonard's other statutory obligations to execute an agency agreement with Wolken in writing and containing the signature of all parties.

The Supreme Court overruled the circuit court, holding that the assignment of a real estate purchase agreement to a new buyer requires the broker to obtain a new agency agreement, along with its required disclosures, under South Dakota's real estate licensing laws. The Court said that [licensees] "*...cannot delegate to their clients, by way of assignment or otherwise, their duty to properly inform their clients by the required 'clear and complete explanation'*"

of their 'representation of their interests of the seller...or buyer'[".]"

The Court also declined to find that the penalties imposed by the Commission constituted an abuse of discretion. The Court did, however, remand the case back to the commission for reconsideration of the proper allocation of the costs of the proceedings.



In Memoriam

The SD Real Estate Commission extends its sincerest sympathy to the families and friends of the following licensee who recently passed away:

Velma Raben, Broker, Rapid City

Citations Issued

The Commission established the Citation Program to diminish the number of license law violations, decrease time required to bring licensees into compliance and to recover costs involved when action is required. The following individuals and/or firms have been issued citations. Each licensee/company has agreed to a Stipulation of Assurance and Voluntary Compliance and has satisfied the requirements of the stipulation.

Failure to correct audit exceptions:

Guy Edwards, Jr., Sturgis, Broker. \$100 penalty.

Constance Ruebel, Sturgis, Broker. \$100 penalty.



Happy St. Patrick's Day



Non-Renewals

The following licenses expired on December 31, 2010. If the license of an active firm or active qualifying broker is not renewed, all licenses hanging in that office must be returned to the Commission office. If your name appears on the list in error or you wish to reinstate the license, please contact the Commission office.

Auctioneers

Fischer, Clint W – Ree Heights
Hartman, Wilbur M – Hawarden, IA
Simon, Steve N - Groton

Broker Associates

Allart, Jaylynn J - Deadwood
Allmer, Danica S - Rapid City
Anderson, Paula J – Luverne, MN
Anderson, Sara - Pierre
Bachmeier, Scott R – Mandan, ND
Bakke, Larry H - Spearfish
Barnes, Michael A – Killdeer, ND
Begeman, Tim - Madison
Benning, Heather L - Sturgis
Blauer, Erica J - Watertown
Blumer, Gregory C - Yankton
Bradley, Michelle M - Sturgis
Brobjorg, Deborah L - Dell Rapids
Brun, Toni L - Spearfish
Burchatz, Jennifer L - Watertown
Burton, Robert S - Rapid City
Christensen, Sherrol B - Sturgis
Cobb, Richard L - Sioux Falls
Crawford, Kimberly J - Hot Springs
Dimmick, Christopher W - Box Elder
Dixon, Traci L - Brookings
Dressen, Ryan E - Dell Rapids
Dreyer, Clint M – Fargo, ND
Dykstra, Jason H - Sioux Falls
Etter, Mary R - Spearfish
Evans, Cherish N - Spearfish
Fedt, Darin E - Sioux Falls
Ferras, Aynsley E - Rapid City
Fischer, Sheilah M - Faulkton
Fleming, Jeremy J - Sioux Falls
Foley, Michael G - Brandon
Foley, Sara M - Brandon
Fox, Alois Jeffrey - Watertown
Gallentine, Shirley G - Rapid City
Galles, Stephen B - Rapid City
Garcia-Ohlfs, Denise N - Rapid City
Gatzke, Dale H - Rapid City
Gramm, Shelly L - Sioux Falls
Grass, Tammy K - Lead

Greef, Kelly B – Sidney, MT
Harms, Timothy P - Aberdeen
Hartman, Wilbur M – Hawarden, IA
Hass, Lowell - Chester
Hass, Sharyl - Chester
Helma, Sam L - Sioux Falls
Hendriks, Victor V - Jefferson
Heyd, Alecia B - Sioux Falls
Hoch, Lukas - Deadwood
Hohm, Zachary B - Fort Collins, CO
Hoogestraat, Carol J – Henderson, NV
Huls, Rhonda S - Watertown
Huntley, Rob D - Rapid City
Ides, Edward H - Custer
Jacobson, Carol A - Rapid City
James, Kenneth D – Brookings
Jobgen, Tanner - Rapid City
Johnson, James C - Sioux Falls
Jonnes, Jill A - Brandon
Kaan, Richard C - Hot Springs
Kasten, Julie D - Clear Lake
Kelly, Richard M - Sioux Falls
Keyes, John R - Pierre
Kirchoff, Christine L - Black Hawk
Kjos, Peter W - Rapid City
Klatt, Sandra - Sioux Falls
Knight, John L – Portland, OR
Koedam, Amy J - Sioux Falls
Kramer, Brandon J – Arvada, CO
Kringen, Rachael R - Sioux Falls
Larsen, Sean M - Sioux Falls
Logsdon, Kimberly A - Rapid City
Loukota, Gary W - Springfield
Lowe, Nickalas J - Hot Springs
Lundie, Bruce H - Rapid City
Maine, Marcie L - Plankinton
Marcy, Sadie A - Rapid City
Mason, Myron K - Rapid City
Mayes, Raymond E - Rapid City
McDowall, Brian J - Las Cruces, NM
Meiners, Roberta L - Hot Springs
Mitchell, Anthony J - Huron
Moody, Brett D - Sioux Falls
Morgan, Cliff - Elizabeth City
Morris, Nicolette R - Rapid City
Murner, Scott A - Hermosa
Nibble, Gregory A - Spearfish
Nienkerk, Kellie K - Brandon
Olsen, Ashley M - Bozeman
Parks, Benjamin A - Sioux Falls
Parks, Kelli L - Sioux Falls
Peterreins, Amber D - Sioux Falls
Petersen, Matthew S - Sioux Falls
Peterson, Kelli L - Rapid City
Petrovic, Marija - Omaha
Phillips-Lundie, Tammy M - Rapid City
Pich, Helen L - Rapid City
Picotte, Sacha - Sioux Falls

Pierce, Donald D - Dell Rapids
 Pierce, Lynn - Dell Rapids
 Prochniak, Roger L - Sioux Falls
 Puthoff, Kathy A - Sioux Falls
 Rathbun, Oakley T - Rapid City
 Rickert, Ryan A - Bozeman, MT
 Riss, Paul L - Rapid City
 Rogers, Kelly E - North Sioux City
 Schaffer, Stephen E - Lead
 Schaub, Thomas L - Hill City
 Schepers, Molly L - Lead
 Schier, Harry D - Rapid City
 Schweitzer, Connie L - Aberdeen
 Smith, Kenneth E - Hermosa
 Sorensen, Shane A - Flandreau
 Spicer, Gayle S - Mesa, AZ
 Steen, Colin - Sioux Falls
 Stout, Paul B - Sioux Falls
 Street, James M - Rapid City
 Stulken, Caleb C - Sioux Falls
 Teigen, John O - Sturgis
 Terrill, Carol - Jacksonville, FL
 Thompson, Carmen C - Rapid City
 Thompson, Gerald W - Watertown
 Thompson, Stanley E - Yankton
 Tveit, Charles L - Aberdeen
 Urban, Travis J - Sioux Falls
 Wagner, Christy M - Aberdeen
 Weber, William J - Merino, CO
 Weems, Jim J - Sioux Falls
 Westphal, Dennis D - Sioux Falls
 Wielocha, Pawek B - Sioux Falls
 Wiese, Rolland E - Sioux Falls
 Zweep, James E - Sioux Falls

Brokers

Anderson, Gary J - Malta, MT
 Argall, William J - Libertyville, IL
 Auer, Ray L - Spearfish
 Baker, Ronald A - Rapid City
 Beesley, Chris M - Custer
 Blatzheim, Garry G - Shakopee, MN
 Bolton, Ronald J - Sioux City, IA
 Bong, Erroll M - West Fargo, ND
 Borgmeyer, John M - Omaha, NE
 Calhoun, Dennis L - Brookfield, MO
 Clayborne, Courtney R - Rapid City
 Cohn, Jonathan M - Sioux Falls
 Dingman, Regina M - Inver Grove Heights, MN
 Dion, Dennis W - Minot, ND
 Elliott, Raymond - Rapid City
 Fortak, Dorothy A - Spearfish
 Geditz, Kiana - Colorado Springs, CO
 Gerdes, Mark R - Montevideo, MN
 Green, Jason E - Rapid City
 Hagg, Brian D - Rapid City
 Hansen, Edward L - Madison

Hansen, James L - Crofton, NE
 Hansen, Roger D - Estelline
 Hill, Karen S - Spearfish
 Holmes, Bruce V - Yukon, OK
 Huber, Vera L - Newcastle, WY
 Imlay, John H - Bordentown, NJ
 James, Curtis E - Saratoga, WY
 Jensen, Jerome A - Wayzata, MN
 Jerred, Clayton O - Gillette, WY
 Jerred, Donna - Gillette, WY
 Johnson, Russell L - Hayden, ID
 Kant, Ellen L - New Underwood
 Klapprodt, Kevin - Rapid City
 Knutson, Larry G - Spicer, MN
 Kraft, Richard F - Duluth, MN
 Lundgren, Brent E - Omaha, NE
 Lundquist, Loren D - Custer
 Malmberg, Eric P - Prior Lake, MN
 Marland, Jr., Robert T - North Platte, NE
 McGrath, Sherry L - Gillette, WY
 Moore Jr., William H - McDonough, GA
 Morgan, P. J. - Omaha, NE
 Narragon, Rita F - Sioux Falls
 Nelson, Paul J - Pipestone, MN
 Nemitz, Benedict R - Canby, MN
 Olsen, Ryan O - Bozeman, MT
 Opp, Bruce E - Saint Paul, MN
 Pederson, Vernon A - Moorhead, MN
 Robinson, Christine B - Valentine, NE
 Sandage, Duane W - Ames, IA
 Schwinghammer, Roger L - White Bear Lake, MN
 Sonnichsen, Janet C - Sioux Falls
 Stampe, Daryl D - Brookings
 Teupel, John E - Spearfish
 Van Woudenberg, Linda L - Watertown
 Watson, John B - Westcliffe, CO
 Wendell, Tammi K - St. Maries, ID
 Williams, Chad A - Rapid City

Home Inspectors

Arne, Steven J - Rapid City
 Burtis, Steven P - Sioux Falls
 Cerney, Sr., Richard J - Mitchell
 Cleveringa, Nathan L - Brandon
 Eckmann, Dennis - Arlington
 Erickson, Vernon D - Sioux Falls
 Fritsch, Jr., Francis A - Deer Park, WA
 Hanisch, Bradley J - Sioux Falls
 Herrboldt, Greg - Sioux Falls
 Horn, Garrett J - Yankton
 Jost, Jim L - Watertown
 Krull, Kevin M - Crooks
 Larson, Douglas D - Yankton
 Martin, Michael L - Chancellor
 McKnight, Patrick N - Colman

Meier, Curtis D - Alcester
 Niederworder, Jr., Leslie R - Rapid City
 Powell, C. Don - Black Hawk
 Stokes, Jason L - Estelline
 Wambach, Michael A - Aberdeen
 Wildeman, Jude T - Rapid City

Property Managers

Andersen, Gordon I - Beresford
 Arp, Gina - Custer
 Bormann, Gregory F - Stickney
 Bornitz, Connie J - Sioux Falls
 Dwinell, Michelle M - Detroit Lakes, MN
 Garfield, Tina R - Rapid City
 Gilson, Charles H - Yankton
 Hammer, Justin - Minot, ND
 Houtman, Kristine L - Brookings
 Losey, Robert E - Deadwood
 Roth, John B - Sioux Falls
 Salverson, Thomas R - Hot Springs
 Schmidt, Carrie - Sioux Falls
 Schopen, Patricia A - Nemo
 Skinner, Lorri M - Sturgis
 Voegeli, Charles P - Beresford
 Walter, Amanda K - Sioux Falls
 Winterboer, Megan - Brookings

Residential Rental Agents

Austin, Mandy L - Viborg
 Beaty, Steven W - Sioux Falls
 Berscheid, Doris D - Sioux Falls
 Bertsch, Amy A - Yankton
 Breitag, Ann L - Vermillion
 Browne, Edward D - Brookings
 Bruce, Delores A - Spearfish
 Caraway, Karen K - Sioux Falls
 Carter, Kathern M - Alexandria
 Cazun, Sarah L - Sioux Falls
 Fossen, Sylvia "Sue" I - Hot Springs
 Gustafson, Kari L - Aberdeen
 Harrison, Shawn N - Rapid City
 Hartsock, Stacey K - Pierre
 Heiman, Susan - Omaha, NE
 Jackson, Charlene M - Rapid City
 Jensen, Rick - Pierre
 Jones, Jessica A - Sioux Falls
 Kreeger, Mindy L - Sioux Falls
 Kropp, Rosalie C - Dell Rapids
 Lewis, Janice - Sioux Falls
 Linke, Summer R - Omaha, NE
 Love, Susan - Armour
 McLane, Isabel M - Madison
 Myers, Katheryn "Kay" A - Sioux Falls
 O Laughlin, Timothy M - Rapid City
 Papka, Richard A - Sioux Falls
 Quisenberry, Jeanine M - Pierre
 Reiter, Jill R - Sioux Falls
 Scott, Brenda F - Eagle Butte

Sehr, Tabitha A - Valley Springs
 Shantz-Koch, Kandi L - Harrisburg
 Sheehan, Jason R - Sioux Falls
 Smith, Michelle K - Sioux Falls
 Thompson, Sven-Eric - Sioux Falls
 Torgerson, Daleen - Spearfish
 Twiss, Carmen R - Rapid City
 Walter, Kristin M - Spirit Lake, IA

Salespeople

Aanenson, Gene – Luverne, MN
 Ahrns, Nicki L – Henderson, NV
 Alexander, Tammy J – Keystone
 Babcock, Scott R – Elkhorn, NE
 Blaue, Debra J – Pipestone, MN
 DeBuse, Lawrence J – Sioux City, IA
 DeJaeghere-Winter, Karen – Luverne, MN
 Geis, Byron W – Buffalo, WY
 Hansen, Lois L – Pipestone, MN

Henslin, Allen J – Bird Island, MN
 Henslin, LaDon D – Bird Island, MN
 Hirsch, Annette M – Dakota City, NE
 Holzwarth, Neil W – Hill City
 Huisenga, Bob M – Sioux City, IA
 Karnes, Norma E – S. Sioux City, NE
 Krull, Kim F – Medora, ND
 Landwehr, Dale – Sauk Rapids, MN
 Ott, Michele K – Lawton, IA
 Palmer, Ralph J – Gillette, WY
 Paulsen Sauser, Lori J – Rapid City
 Pawloski, Christopher A – Council Bluffs, IA
 Schenkelberg, Chris – Sioux City, IA
 Sheets, Dena R – Sturgis
 Simon, Steve N – Groton
 Sorenson, Diane K – Sioux City, IA
 Stoffers, Wayne J – Sioux Falls
 Story, LeRoy J – Sioux Falls

Swanson, Kevin L – Ivanhoe, MN
 Tullo, James N – Henderson, NV
 VonHoltum, James L – Lismore, MN
 Vos, Linda K – Pipestone, MN
 Wikstrom, Sarah – S. Sioux City, NE
 Zetzman, Theodore J – Omaha, NE

Timeshare Agents

Bray, Casey – Rapid City
 Carlson, Jennifer L – Spearfish
 Carr, Robert M – Lead
 Graham, Cory J – Rapid City
 Haven, Skip – Rapid City
 Horst, Melissa I – Lead
 Houlthouser, Terry – Lead
 Liffengren, Christopher D – Black Hawk
 Miller, Lena A – Spearfish
 Songstad, Lukas R – Rapid City
 Zwicky, Gloria J – Lead

APPRAISER UPDATE

Appraiser Certification Program Mission–Purpose–Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

Advisory Council Appointment

Anthony (Tony) Klein, State-Licensed Appraiser from Pierre has accepted a first term appointment by Secretary Kinsman effective January 1, 2011. The Department appreciates his willingness to serve on the Council.

Tony will fill the position held by Randy Vance of Pierre from January 1, 2003, until December 31, 2010. The Department of Revenue and Regulation wishes to extend thanks and gratitude for Randy's service on the Council.

Anonymous Complaints

ARSD 20:14:11:01.01. Anonymous complaints. Initiation of an investigation may be commenced upon receipt of an anonymous complaint if it meets the following criteria:

(1) The allegations of violations of any provision of this article are considered credible and based upon factual information which is independently verifiable; and

(2) The complaint is accompanied by a copy of the appraisal report or other documents which contain clearly

identifiable errors or violations of the provisions of this article.

Review of Cases – 1/1/2010 – 12/31/2010

For the period January 1, 2010, through December 31, 2010, the Department has received 22 upgrade applications and initiated 25 complaint investigations.

Upgrades – Eight pending, five agreed disposition, and nine issued.

Complaints – 15 pending, three final dispositions, and seven dismissed.

Disciplinary Action Information

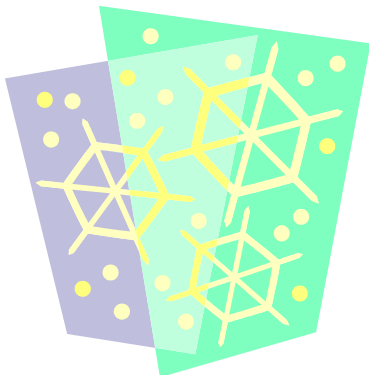
Public information regarding disciplinary action taken against an appraiser is available upon written request to the Department of Revenue and Regulation, Appraiser Certification Program, 445 East Capitol Avenue, Pierre, SD 57501 or e-mail – Sherry.Bren@state.sd.us. Include in the request for information the name of the appraiser and the appraiser's city and state of residence. (Disciplinary action may include denial, suspension, censure, reprimand, or revocation of a certificate by the department. (ARSD 20:14:11:03))

Upgrades – December 2010/January 2011

Kelsie Hughes, State-Certified Residential
James Rysavy, State-Certified Residential

New Licensees – December 2010/January 2011

Thomas M. Danielson, State-Certified Residential – Maple Grove, MN
Bradley H. Estes, State-Registered – Rapid City, SD
Steve M. Wenger, State-Certified Residential - Valparaiso, IN
Jon D. Beitelspacher, State-Registered – Aberdeen, SD
Elizabeth N. Neuharth, State-Registered – Aberdeen, SD
Morgan B. Duffy, State-Registered – Sioux Falls, SD



Warning! Warning! Warning!

(Article courtesy of the Oregon Appraiser Certification and Licensure Board, The Oregon Appraiser Summer 2010 issue, by Bob Keith, ACLB Administrator)

This article is rather long, but I encourage you to read it. Five of the subheadings are active and on-going issues causing compliance problems for a number of appraisers. The last one has the potential to be a huge problem for appraisers. The issues are:

Misleading Use of Comp Photos (MLS, CoStar, LoopNet)

Signing Reports Without Inspecting the Subject

Revising an Appraisal Report

Requirement to Disclose Comparable Confirmation

Proper Disclose of Appraiser Assistance

Alternative Valuation Products

Misleading Use of Comp Photos

An alarming number of appraisers are utilizing photos from MLS, CoStar, LoopNet (collectively referred to herein as “MLS photos”) in their reports without attribution to the source. Even worse, they crop the photos to exclude the data service's copyright, dates and/or other identifying marks that would indicate the photo was not personally taken by the appraiser. Both practices are very misleading.

Using MLS photos of comparable sales is permissible only if the appraiser makes proper attribution of the source of the photos. Sometimes access to a comp is restricted, and using an MLS photo is the only option. Before doing so, be aware that some appraisal users will not accept a comp photo that is not personally taken by the appraiser.

Some appraisers who use MLS photos contend that they inspected the exterior of the comp(s) but did not take their own photo(s) while doing so; therefore, signing the certification is appropriate... and so it is. However, with the understanding that an appraiser could be called into question whether they actually inspected the exterior of a comp, what better evidence could there be than a photo that was taken by the appraiser

while parked across the street from the comp!

Some appraisers argue that even when it is possible to take their own photo, an MLS photo should be used because it more accurately represents the condition of the property while exposed to the market. In these situations, best practice would dictate that appraisers include both photos in the report with proper attribution for each.

Using the work of another (MLS photos) without attribution, cropping the photo to conceal its source and then certifying that the work (taking the photo) is your own is a willful intent to mislead and is unethical. The Board takes a particularly dim view of this practice.

Signing Reports Without Inspecting the Subject

Another misleading practice is supervising appraisers sending their assistants to perform an interior and exterior inspection of a subject property while the supervisor only inspected the exterior, but then signs a certification they inspected both.

It is permissible for an appraiser to not inspect the interior and/or exterior of a subject property, but only if they make an accurate disclosure in their certification of exactly what they did (or did not) inspect. Correspondingly, it is assumed that proper disclosure of appraisal assistance regarding the inspection is made in the report. This disclosure issue is the subject of a subsequent section of this article. These comments apply equally to residential and non-residential appraisers.

Residential appraisers are reminded that the Fannie Mae certification states, “I performed a complete visual inspection of the interior and exterior areas of the subject property.” It is unethical to sign the Fannie Mae certification if the appraiser sent an assistant to perform the interior and/or exterior inspection of a subject property instead of performing the inspection themselves. The act of a supervising appraiser reviewing photos and/or videos of a subject property (taken by an assistant) in lieu of a personal inspection does not constitute an “inspection”.

To create a false impression that the interior and exterior of a subject property was inspected, when one or both were not, is a willful intent to mislead and is

unethical. The Board also takes a particularly dim view of this practice. Very recently, the Board revoked an appraiser's license due largely to falsely certifying to performing over 50 interior inspections.

Likewise, it is unethical for a registered appraiser assistant to knowingly engage in the practice of inspecting property that their supervising appraiser failed to inspect, but who signs a certification that they are performing the inspections.

Revising an Appraisal Report

Improper revisions of appraisal reports and the corresponding workfile deficiencies are common problems we encounter.

When issuing (uploading) a revised appraisal report, an appraiser should identify it as a revised report and should state the type and extent of the revisions. Removing such disclosure at a client's request after a revised report has been issued is misleading because it conceals the fact that a prior report exists and that the prior report has been altered by issuance of the revised report.

After an original appraisal report has been issued and a correction or revision is necessary, the appraiser must maintain in his/her workfile a record of all communications with the client involving the request for the revision. This protects the appraiser by preserving proper documentation for why the original appraisal report was altered.

Consider two scenarios in which revisions are required. The first is when a new (revised) report is requested and delivered by electronic or other means to a client by the appraiser; this occurs most frequently with residential appraisers. The second scenario is when an entire revised report is not issued, but only the corrected pages are requested by and delivered to the client; this occurs predominately with non-residential appraisal reports.

First scenario:

When two or more separate reports (original and revised) are issued, a true and exact copy of the original and each revised report in their entirety must be retained in the workfile. Many times appraisers err by altering an electronic version of the original report, thus permanently erasing any record of the

original data/analysis that was removed from the original report.

If the original report contained an identifying report number, then each subsequent revised report must have its own unique report number so that each revised report can be differentiated from the original report. Also, each report must reside in the original assignment's workfile and each must have different report dates assuming that they were each generated in different days. This holds true even if the original report had no identifying report number as occurs in some instances, primarily involving non-residential assignments.

Second scenario:

When only revised pages are provided to a client and a revised report (in its entirety) is not issued, the appraiser has two workfile options. The first option is to insert the revised pages in the workfile copy of the original appraisal report and retain the removed pages in the workfile. The second option is to leave the original report intact and add the revised pages to the workfile. In either case, there must be file notation documenting what was done, why and when.

In both scenarios, the governing principle here is to assure that permanent workfile documentation is retained for the original and each revised appraisal report and that there exists a clear record of what was revised, why it was revised and when it was revised.

Failure to maintain property records when revising an appraisal constitutes a violation of ORS 674.140(7) and the Record Keeping Section of the Ethics Rule of USPAP.

Requirement to Disclose Comparable Confirmation

Oregon Administrative Rule 161-025-0060(5) requires all appraisers to "disclose in all appraisal reports whether the comparable sales analyzed in the appraisal report were or were not confirmed by a party to the transaction or an agent or representative of a party to the transaction" (emphasis added). Note that the rule does not require appraisers to confirm comparable sales or to report the name and telephone number of the person with whom the comp was confirmed.

It should be counter-intuitive for most appraisers to contemplate not

confirming comparable sales utilized in an appraisal report since doing so could interfere with making reliable adjustments to those comps. However, on occasion the scope of work for certain appraisal assignments would allow an appraiser to not confirm comparable sales.

A common fault in appraisal reports occurs when appraisers attempt to use "boilerplate" (one size fits all) comments to comply with this rule. Instead, appraisers should be specific enough with each comp confirmation disclosure to help their clients and intended users understand the credibility of comparable sales relied upon in the appraisal report. The actual language used to accomplish this can vary from assignment to assignment depending on the intended use, scope of work, reporting option, property type and other factors.

Proper Disclosure of Appraisal Assistance

Supervising Appraisers are reminded of the requirement for making proper disclosure of real estate appraisal assistance in their appraisal reports. Registered Appraiser Assistants are not eligible to receive experience credit towards earning a certification unless proper disclosure is made.

Oregon Administrative Rule 161-025-0025(d) requires Supervising Appraisers to "make a clear and prominent disclosure of real estate appraisal assistance in each appraisal report by identifying each individual category of experience that the appraiser assistant provided as outlined in OAR 161-025-0025(2)(a)".

- A) Define the appraisal problem;
- B) Conduct preliminary analysis, select and collect applicable data;
- C) Conduct an analysis of the subject property;
- D) Conduct highest and best use analysis;
- E) Estimate land value, including on-site improvements;
- F) Estimate value of the property using each of the three approaches to value;
- G) Reconcile each value indication and reconcile the final value estimate; and
- H) Report estimate(s) of value(s) as defined.

The Board must ensure that all Registered Appraiser Assistants obtain

sufficient experience in all categories of experience listed above before earning a certification. Therefore, when the Board staff processes certification applications they cross check the hours claimed in each category of experience on the Assistant's experience log with the actual disclosure in the appraisal report indicating the experience categories that were performed by the Assistant.

Alternative Valuation Products

The Comment Section of Standard Rule 1-1(a) states, "This Standard Rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate filed have a substantial impact on the appraisal profession."

Changes in national and local economic conditions, as well as data availability and technological advances, have been occurring at a remarkable pace in recent years. One result is the change in what various users of valuation products need or want; namely, faster and

cheaper valuation tools typically for purposes other than first mortgage loans.

These conditions have given rise to the emergence of "Alternative Valuation Products" (AVP). Some AVPs are designed by knowledgeable appraisers for appraisers to use in meeting market demand for alternative valuation products. The assumption is that these products are designed to be USPAP compliant when in the hands of ethical and competent appraisers trained in the use of the AVP.

Appraisers should beware of AVPs offered by companies that claim USPAP compliance is not required because their product is not an "appraisal". One such product asks an appraiser to reconcile between two different Broker's Price Opinions (BPOs). Another product asks appraisers to review and "reconcile" between various combinations of BPOs, review appraisal reports and/or original appraisal reports.

To be clear, appraisers are encouraged to think outside of the "traditional" box and to utilize their

knowledge and expertise in new ways to satisfy demand in the market place for new valuation products. To do so, an appraiser must comply with USPAP in every situation that calls upon them to develop and communicate their own opinion of value. This includes concurring with another's value opinion or opining that another's value opinion is "too high" or "too low".

USPAP does not require any particular form or format to report assignment results for valuation services. Neither does the Board endorse or "pre-approve" a particular reporting form, software or format. However, in order to monitor and hopefully prevent companies from inappropriately soliciting appraisers to provide AVPs or any products or services that are not USPAP compliant, we ask appraisers to forward questionable solicitations to the Board for appropriate follow-up.